

ESTTA Tracking number: **ESTTA736608**

Filing date: **03/30/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Fruit of the Loom, Inc.
Granted to Date of previous extension	03/30/2016
Address	1 Fruit of the Loom Drive Bowling Green, KY 42103 UNITED STATES

Attorney information	Carrie A. Shufflebarger Thompson Hine LLP 312 Walnut Street Fourteenth Floor Cincinnati, OH 45202 UNITED STATES carrie.shufflebarger@thompsonhine.com, docket@thompsonhine.com, louis.ebling@thompsonhine.com, sharon.bella@thompsonhine.com Phone:513.352.6678
----------------------	--

Applicant Information

Application No	86458305	Publication date	12/01/2015
Opposition Filing Date	03/30/2016	Opposition Period Ends	03/30/2016
Applicant	Howington, Corey 4312 dulles dr apt 12106 Fort Worth, TX 76155 UNITED STATES		

Goods/Services Affected by Opposition

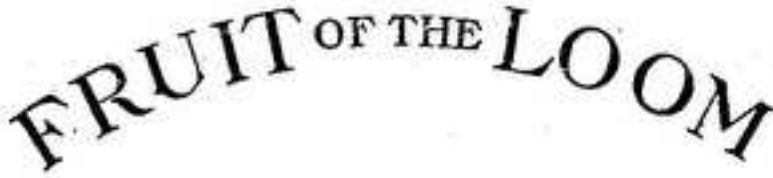
Class 025. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Clothing, namely, tops, bottoms, dresses, suits, jackets, and headwear; Activewear, namely, tops and bottoms


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	174998	Application Date	11/29/1922
Registration Date	10/30/1923	Foreign Priority Date	NONE

Word Mark	FRUIT OF THE LOOM
Design Mark	
Description of Mark	NONE
Goods/Services	Class U039 (International Class 010, 025, 026). First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 [Nurses' and Maids' Uniforms, Caps, andAPERONS; MEN'S AND BOYS' DRESS AND NEGLIGEE SHIRTS, BOYS' BLOUSES, KITCHENETTE AP- RONS, LADIES DRESSES,] WOMEN'S AND CHILDREN'S TEXTILE UNDER- WEAR; [NIGHTS SHIRTS AND] PAJAMAS FOR MEN, [WOMEN,] [BOYS] [, AND GIRLS]

U.S. Registration No.	913838	Application Date	06/04/1970
Registration Date	06/08/1971	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U039 (International Class 010, 025, 026). First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 CLOTHING FOR MEN, WOMEN AND CHILDREN-NAMELY, UNDERWEAR, LINGERIE, [DRESS SHIRTS,] SPORT AND KNIT SHIRTS, [SLACKS], PANTS, [JEANS,] SHORTS, [BLOUSES,] PAJAMAS, [SLEEPERS, WATER- PROOF PANTS, BIBS, APRONS,] GYM SHORTS AND [PLAY SUITS, BLOOMERS, ROBES, TIES, BELTS, GLOVES,HANDKERCHIEFS, SCARFS, RAINCOATS, CAPES, AND] JACKETS, SOCKS, HOSIERY, [LEOTARD TIGHTS, SHOES, SNEAKERS, BOOTS, AND RUBBERS]		


U.S. Registration No.	1234708	Application Date	07/07/1981
Registration Date	04/12/1983	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 Clothing for Men, Women and Children-Namely, Underwear, Lingerie, [Dress Shirts, Sport and Knit Shirts, Slacks, Pants, Jeans, Shorts, Blouses,] Pajamas, Sleeping Suits, [Waterproof Pants, Bibs, Aprons, Athletic and Play Suits, Bloomers,] [Robes,] [Ties, Belts, Gloves, Scarfs, Raincoats, Capes and Jack-ets,] Socks, Hosiery [, Leotard Tights,] [Shoes, Sneakers, Boots and Rubbers]

U.S. Registration No.	1876708	Application Date	12/23/1993
Registration Date	01/31/1995	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 apparel for men, women and children; namely, underwear, lingerie, shirts, tee shirts, [sport and knit shirts,] tank tops, [crop tops,] long sleeve tee shirts, [turtleneck shirts,] sweatshirts, [pants,] sweatpants, [jackets,] socks, hosiery leotard tights, shorts, brassieres, panties, [slips, camisoles and petti culottes]		

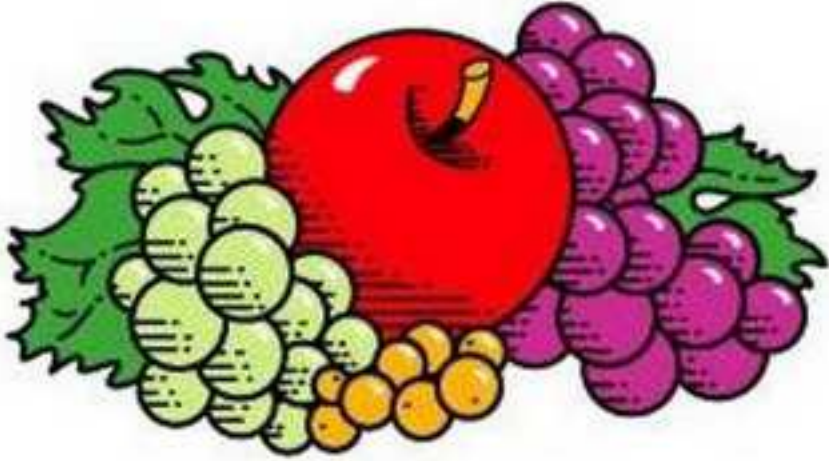
U.S. Registration No.	4146754	Application Date	11/03/2011
Registration Date	05/22/2012	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM BRAND SHOP		
Design Mark			
Description of	NONE		


Mark	
Goods/Services	Class 035. First use: First Use: 2011/10/26 First Use In Commerce: 2011/10/26 Retail store services featuring apparel, footwear, sporting goods, sports-related equipment, exercise equipment

U.S. Registration No.	4227455	Application Date	09/28/2011
Registration Date	10/16/2012	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	The mark consists of the words "FRUIT OF THE LOOM" and of a design of a cluster of fruit between the words "FRUIT" and "OF THE LOOM". The cluster of fruit consists of an apple with stem, bunches of grapes right and left of the apple and a group of currants before it, with leaves showing from behind the cluster on the right and left.		
Goods/Services	Class 025. First use: First Use: 2012/01/24 First Use In Commerce: 2012/01/24 Bottoms; Socks; Tops; Underwear		

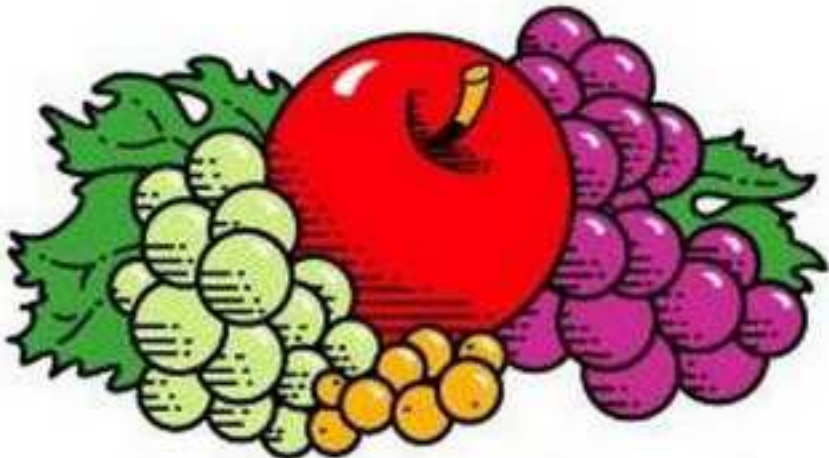
U.S. Registration No.	4372394	Application Date	12/14/2012
Registration Date	07/23/2013	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2012/07/26 First Use In Commerce: 2012/07/26 Computerized on-line retail store services in the field of clothing		


U.S. Registration No.	4372395	Application Date	12/14/2012
Registration Date	07/23/2013	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of red apple with a yellow stem, a bunch of light green grapes, a bunch of purple grapes, and a bunch of yellow currants, all appearing on a bed of green leaves. The color black appears in the form of outlining shading of the fruit and leaves, and the color white appears in the form of light reflecting on the fruit.
Goods/Services	Class 035. First use: First Use: 2012/07/26 First Use In Commerce: 2012/07/26 Computerized on-line retail store services in the field of clothing

U.S. Registration No.	4408550	Application Date	11/15/2012
Registration Date	09/24/2013	Foreign Priority Date	NONE
Word Mark	FRUIT INK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 040. First use: First Use: 2011/10/26 First Use In Commerce: 2011/10/26 Custom imprinting of clothing; Screen printing		

U.S. Registration No.	4485501	Application Date	02/07/2011
Registration Date	02/18/2014	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of red apple with a yellow stem, a bunch of light green grapes, a bunch of purple grapes, and a bunch of yellow currants, all appearing on a bed of green leaves. The color black appears in the form of outlining shading of the fruit and leaves, and the color white appears in the form of light reflecting on the fruit.
Goods/Services	Class 025. First use: First Use: 2013/02/18 First Use In Commerce: 2013/02/18 Sleepwear; swimwear

U.S. Registration No.	4491448	Application Date	02/07/2011
Registration Date	03/04/2014	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/02/18 First Use In Commerce: 2013/02/18 Sleepwear; Swimwear		

Attachments	71172682#TMSN.png(bytes) 72361720#TMSN.png(bytes) 73317339#TMSN.png(bytes) 85463358#TMSN.png(bytes) 85434569#TMSN.png(bytes) 85803251#TMSN.png(bytes) 85803288#TMSN.png(bytes) 85780224#TMSN.png(bytes)
-------------	--

	85235985#TMSN.png(bytes) 85235949#TMSN.png(bytes) CINCINNATI- #1031374-v2-FORBIDDEN_FRUIT_notice_of_opposition.pdf(72869 bytes)
--	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/cas/
Name	Carrie A. Shufflebarger
Date	03/30/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of

Application No. : 86/458,305
Applicant : Corey Howington
Mark : FORBIDDEN FRUIT
Filing Date : November 19, 2014
Publication Date : December 1, 2015
Opposed Class : 25

FRUIT OF THE LOOM, INC.,

Opposer,

v.

COREY HOWINGTON,

Applicant.

:
:
:
:
:
:
:
:
:
:
:
:

Opposition No. _____

NOTICE OF OPPOSITION

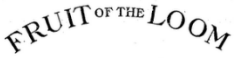




Opposer, Fruit of the Loom, Inc., a corporation duly organized and existing under the laws of the State of New York, having a mailing address at One Fruit of the Loom Drive, Bowling Green, Kentucky 42103, believes it will be damaged by registration of the mark FORBIDDEN FRUIT shown in Application Serial No. 86/458,305, and hereby opposes registration of said mark.


As grounds of opposition, it is alleged that:

1. Opposer is Fruit of the Loom, Inc., owner of the famous FRUIT OF THE LOOM brand. Opposer is the owner of, is currently using, and has itself and through its predecessors-in-interest continuously used for over 150 years in U.S. commerce marks consisting of or incorporating "FRUIT," "FRUIT OF THE LOOM," and/or designs incorporating fruit elements

in connection with, inter alia, clothing or textile goods, including T-shirts, underwear, sweatshirts, sweatpants, and socks (the “FRUIT Marks”).

2. Opposer (through its predecessor-in-interest) first registered THE FRUIT OF THE LOOM and Design in the U.S. Patent and Trademark Office on August 8, 1871, under U.S. Registration 418. Opposer currently owns numerous federal registrations for its FRUIT Marks, including without limitation the following, several of which have become incontestable within the meaning of the Lanham Act:

Trademark	Serial/Reg.	First Use	Goods
	174,998	1891	Women’s and children’s textile underwear; pajamas for men
	913,838	1891	Clothing for men, women and children namely, underwear, lingerie, sport and knit shirts, pants, shorts, pajamas, gym shorts and jackets, socks, hosiery
	1,234,708	1891	Clothing for Men, Women and Children-Namely, Underwear, Lingerie, Pajamas, Sleeping Suits, Socks, Hosiery
FRUIT OF THE LOOM	1,876,708	1891	Apparel for men, women and children; namely, underwear, lingerie, shirts, tee shirts, tank tops, long sleeve tee shirts, sweatshirts, sweatpants, socks, hosiery, leotard tights, shorts, brassieres, panties
FRUIT OF THE LOOM BRAND SHOP	4,146,754	2011	Retail store services featuring apparel, footwear, sporting goods, sports-related equipment, exercise equipment
FRUIT  OF THE LOOM	4,227,455	2012	Bottoms; Socks; Tops; Underwear
FRUIT OF THE LOOM	4,372,394	2013	Computerized on-line retail store services in the field of clothing
	4,372,395	2013	Computerized on-line retail store services in the field of clothing

Trademark	Serial/Reg.	First Use	Goods
FRUIT INK	4,408,550	2013	Custom imprinting of clothing; Screen printing
	4,485,501	2013	Sleepwear; Swimwear
FRUIT OF THE LOOM	4,491,448	2013	Sleepwear; Swimwear

3. Building on the tremendous success and recognition of the FRUIT OF THE LOOM mark, Fruit has also developed strong common law rights in the mark FRUIT, which it promotes through its famous “FRUIT GUYS” characters, its other FRUIT marks, and web sites such as www.fruit.com, www.fruitoftheloom.com, and www.fruitactivewear.com.

4. Opposer has expended substantial amounts of money, time, and effort in advertising, promoting, and popularizing its FRUIT Marks over many years and in preserving the good will associated therewith.

5. Opposer’s FRUIT Marks have become distinctive of and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of its goods.

6. The public has come to know Opposer’s FRUIT Marks and recognize that any goods so marked originate with Opposer. By virtue of these efforts and by virtue of the excellence of its goods, Opposer has gained a valuable reputation for its FRUIT Marks.

7. The term “FRUIT,” alone and in combination with other terms, has become synonymous with Opposer for a variety of clothing goods.

8. Corey Howington, an individual resident of Texas, filed Application Serial No. 86/458,305 under Section 1(b) of the Lanham Act on November 19, 2014 (“Application”), seeking registration of the trademark FORBIDDEN FRUIT (“Applicant’s Mark”) for the following goods in International Class 25: “Clothing, namely, tops, bottoms, dresses, suits, jackets, and headwear; Activewear, namely, tops and bottoms.”

9. Applicant’s Mark was published for opposition in the Official Gazette of the United States Patent and Trademark Office on December 1, 2015.

10. Priority is not an issue: Opposer’s longstanding registration and use of its FRUIT Marks described above is well prior to the filing date of the Application.

11. The goods identified in the Application are identical or closely related to Opposer’s goods sold under the FRUIT Marks, and are likely to be sold to the same class of purchasers as Opposer’s goods sold under its FRUIT Marks.

12. Applicant’s Mark so resembles the marks previously used by Opposer in commerce as to be likely, when used in connection with Applicant’s goods, to cause confusion, deception or mistake as to the affiliation, connection or association of Applicant with Opposer, and/or the origin, sponsorship, or approval of Applicant’s goods or commercial activities by Opposer under 15 U.S.C. § 1052(d). The aforesaid likelihood of confusion will damage Opposer within the meaning of 15 U.S.C. § 1063.

13. Opposer’s FRUIT Marks are famous and distinctive within the meaning of the Lanham Act.

14. Opposer's FRUIT Marks became famous long prior to the filing date of the Application.

15. Registration of the highly similar Applicant's Mark will lessen the capacity of Opposer's famous and distinctive FRUIT Marks to distinguish and identify Opposer's goods and services from those of others, thereby diluting the distinctive quality of Opposer's FRUIT Marks in violation of 15 U.S.C. § 1125(c), and causing damage to Opposer within the meaning of 15 U.S.C. § 1063.

16. Opposer would be damaged by registration of Applicant's Mark, because registration would grant Applicant statutory rights under the Trademark Act of 1946, and would tend to restrict, interfere with, and damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

WHEREFORE, Opposer prays this Opposition be sustained, and registration of the Application cited above be refused.

Please charge the appropriate filing fee to the credit card account of Opposer's counsel, as provided through the ESTTA filing system.

Please direct all correspondence to Carrie A. Shufflebarger, Esq., at Thompson Hine, LLP, 312 Walnut Street, Fourteenth Floor, Cincinnati, Ohio 45202, and all calls to the same at (513) 352-6678.

Date: March 30, 2016

Respectfully submitted,

/s/ Carrie A. Shufflebarger
Carrie A. Shufflebarger, Esq.
Louis K. Ebling, Esq.
THOMPSON HINE, LLP
312 Walnut Street
Fourteenth Floor
Cincinnati, Ohio 45202
(513) 352-6678
carrie.shufflebarger@thompsonhine.com
lou.ebling@thompsonhine.com

CERTIFICATE OF FILING

I certify that this NOTICE OF OPPOSITION is being submitted electronically to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this 30th day of March, 2016.

/s/ Carrie A. Shufflebarger
Carrie A. Shufflebarger

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Opposition is being served via United States mail, postage prepaid, on the following, on this 30th day of March, 2016:

Corey Howington
4312 Dulles Dr. Apt. 12106
Fort Worth, TX 76155

Rachel Wenzel
Raj Abhyanker, P.C.
1580 W. El Camino Real Ste. 8
Mountain View, CA 94040-2462

/s/ Carrie A. Shufflebarger
Carrie A. Shufflebarger